U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306
August 13, 2013

Stephen C. Smith, Esq
Smith Law Offices P.A.
[redacted]
Bangor, ME 04401

SUBJECT: Firearm Denial Appeal
National Instant Criminal Background Check System (NICS) Transaction Number (NTN) - [redacted]
Voluntary Appeal File (VAF)
Mr J[redacted] A[redacted] W[redacted]

Dear Mr Smith:

The fingerprints you submitted on behalf of your client, Mr. J[redacted] A[redacted] W[redacted], are identical with those in a record that was used to initially deny his firearm purchase or pawn redemption. A copy of your client's FBI identification record is enclosed. Based on further review and investigation, we have verified that your client's FBI identification record currently reveals one potentially prohibitive arrest lacking the necessary information to apply a determination regarding firearm eligibility, specifically the elements of the charge for which your client was convicted.

The Appeal Services Team (AST) of the FBI Criminal Justice Information Services (CJIS) Division's NICS Section was unable to obtain the necessary information for one arrest contained on the record that was used as the basis for Mr. W[redacted]'s denial. Consequently, although the original prohibitive information has been resolved, potentially prohibitive information exists on your client's record Therefore, unless the appropriate documentation is submitted and/or your client's record is updated, any future firearm transactions will be subject to a delay You may wish to contact the court agency which adjudicated your client's charge

and seek to ensure the information contained in the Interstate Identification Index (III) is accurate and complete The name and location of the court agency is as follows:

Maine District Court
Division of Bangor
73 Hammond Street
Bangor, ME 04401
Date of Arrest: [redacted], 2005
Court Case Number: BANDC-CR-2005-[redacted]

Pursuant to Title 17-A Maine Revised Statutes Annotated (M.R.S.A.), Section 501, "A person is guilty of disorderly conduct if:

> 2. In a public or private place, he knowingly accosts, insults, taunts or challenges any person with offensive, derisive or annoying words, or by gestures ***or other physical conduct***, which would in fact have a direct tendency to cause a violent response by an ordinary person in the situation of the person so accosted, insulted, taunted or challenged; or

Please be advised the charge itself does not have to include the words "domestic violence" to meet the misdemeanor crime of domestic violence definition. The verbiage under 17-A M.R.S.A. §501(2), stating " or other physical conduct", would meet criteria under Title 18, United States Code (U.S.C.), Section 922(g)(9), for the use or attempted use of physical force However, the NICS Section was unable to determine the specific type of "conduct" under 17-A M.R.S.A. §501(2), for which your client was convicted by the Bangor District Court. In the absence of this required information, the AST is unable to determine your client's firearm eligibility.

With regard to the November 2, 2005, date of arrest, when the NICS Section contacts all necessary agencies and still cannot obtain definitive information regarding an arrest, then the individual has the option of submitting a notarized written statement/affidavit of recollection of the circumstances. The submission received by the NICS Section serves as evidence and must include all details surrounding the arrest, the charges, the level of the crime/conviction, and the victim's relationship. If during any future firearm background checks, it is discovered the submission contains inaccurate details about the problematic arrest, the individual may be subject to criminal prosecution.

Stephen C Smith, Esq.

The FBI, as custodian of arrest information submitted voluntarily by local, state, tribal, and federal law enforcement agencies, is without authority to effect any changes in such records unless notified to do so by an authorized criminal justice agency Any request for the modification of such information must be received from the agency which originally submitted it, a court with jurisdiction over the agency's records, or state identification bureau having authority to modify arrest record entries for the entire state.

Please be advised, when conducting a future firearm background check, the NICS Section is required to delay the transaction and research every charge which, if supported by a conviction, could subject the record holder to firearm prohibitions under the Gun Control Act of 1968 If the NICS Section is unable to obtain conclusive disposition information and provide a final determination of either proceed or deny to the Federal Firearms Licensee (FFL) **within three business days, the FFL is not prohibited from transferring the firearm; however, the FFL is not required to do so**. The NICS Section places transactions which have not received a final determination in an open status for the current retention period set by federal regulations

Unless the arrest record is removed from the III or is updated by the submitting agency, future transactions may continue to be delayed based upon a name match with an arrest record

Additionally, the AST has determined your client is currently **not eligible** to be entered into the VAF due to the potential federal prohibitor previously mentioned.

NICS Section
CJIS Division

Enclosure

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES DIVISION
CLARKSBURG, WV 26306

[redacted] ICN [redacted]

THE FOLLOWING FBI IDENTIFICATION RECORD FOR [redacted] IS FURNISHED FOR OFFICIAL USE ONLY

DESCRIPTORS ON FILE ARE AS FOLLOWS:

NAME W[redacted], J[redacted] A[redacted]

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR
[redacted]	[redacted]	1983/[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

BIRTH CITY
UNREPORTED

BIRTH PLACE
MASSACHUSETTS

CITIZENSHIP
UNITED STATES

PATTERN CLASS
[redacted]

OTHER BIRTH DATES	SCARS-MARKS-TATTOOS	SOCIAL SECURITY	MISC NUMBERS
NONE	NONE	[redacted]	NONE

ALIAS NAME(S)
NONE

END OF COVER SHEET

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
CRIMINAL JUSTICE INFORMATION SERVICES DIVISION
CLARKSBURG, WV 26306

[redacted] ICN [redacted]

BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.
- FBI IDENTIFICATION RECORD -

WHEN EXPLANATION OF A CHARGE OR DISPOSITION IS NEEDED, COMMUNICATE DIRECTLY WITH THE AGENCY THAT FURNISHED THE DATA TO THE FBI.

NAME	FBI NO.	DATE REQUESTED
W[redacted].J[redacted] A[redacted]	[redacted]	2013/[redacted]

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR
[redacted]	[redacted]	1983/[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

BIRTH PLACE
MASSACHUSETTS

PATTERN CLASS
[redacted]

CITIZENSHIP
UNITED STATES

1-ARRESTED OR RECEIVED 2005/[redacted] SID-[redacted]
AGENCY-POLICE DEPARTMENT ORONO (ME[redacted])
AGENCY CASE-05-064906
CHARGE 1-DOMESTIC ASSAULT

COURT-
CHARGE-DISORDERLLY CONDUCT 17-A 501(2) CLASS E
SENTENCE-
[redacted]-2005 PLEA GUILTY FOUND GUILTY $400 FINE 10% GOV'T OPERATION SURCHARGE FUND $40 $10 VICTIMS COMPENSATION FUND 100% GENERAL FUND $400 4% MAINE CRIMINAL JUSTICE ACADEMY $16 1% COUNTY JAIL $4 5% GENERAL FUND ADDLT 5% SURCHARGE $20 TOTAL DUE $490

RECORD UPDATED 2007/[redacted]

ALL ARREST ENTRIES CONTAINED IN THIS FBI RECORD ARE BASED ON FINGERPRINT COMPARISONS AND PERTAIN TO THE SAME INDIVIDUAL.

THE USE OF THIS RECORD IS REGULATED BY LAW. IT IS PROVIDED FOR OFFICIAL USE ONLY AND MAY BE USED ONLY FOR THE PURPOSE REQUESTED.